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CIVIL AND POLITICAL RIGHTS INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Report of the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission on Human Rights resolution 1998/42

Report on the mission to Malaysia

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Introduction

1. This report has been prepared pursuant to resolution 1998/42 of the Commission on Human Rights. It presents and analyses information received by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, during his visit to Malaysia from 20 to 24 October 1998, as well as information received earlier from individuals and non-governmental organizations concerning allegations of violations of the right to freedom of opinion and expression.

2. By letter dated 27 May 1998 addressed to the Permanent Mission of Malaysia to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government for a visit to Malaysia. On 9 June 1998, the Government of Malaysia granted this request and the dates of the visit were confirmed by letter dated 9 September 1998.

3. The Special Rapporteur would like to express his gratitude for the cooperation extended to him by the Government of Malaysia in discharging his mandate.

4. The Special Rapporteur would also like to express his appreciation to the Resident Representative and staff of the United Nations Development Programme in Kuala Lumpur for their efficient organization of his visit.

5. The visit took place mainly in Kuala Lumpur, except for one day in Penang to attend the Commonwealth Editors' Forum and to meet with editors-in-chief of the main Malaysian newspapers. During his visit, the Special Rapporteur met with representatives of the Government, members of Parliament and the judiciary, as well as with representatives of non-governmental organizations active in the field of human rights, academics, press professionals, witnesses and victims of alleged violations and other members of civil society who were of interest to his mandate.

6. A list of persons with whom the Special Rapporteur met during the visit is contained in the annex to this report. The Special Rapporteur would like to take this opportunity to thank those he met for their generous efforts to assist him during his visit to Malaysia.

7. It should be noted that the Special Rapporteur had also requested to visit some of the detainees but could not do so due to the Government's extreme preoccupation with certain emerging situations that developed during the period of his visit. As it was short notice, the inability of the Government to respond positively may be understood.

I. BACKGROUND AND CONTEXT

8. Malaysia is a federation of 13 states with a parliamentary system of government based on periodic multiparty elections in which the ruling coalition of political parties - the Barisan Nasional - has held power since the independence of Malaysia in 1957.

9. In 1981 Dr. Mahathir Mohamad became the fourth Prime Minister of Malaysia since independence. He contributed to the economic growth of Malaysia by initiating a bold policy of heavy industrialization and a foreign policy asserting the interests of the undeveloped South versus those of the developed nations of the North. Dr. Mahathir became the spokesman for the "New Asia", upholding certain values by which the human rights and fundamental freedoms of individuals may be limited in due regard of the need to achieve or sustain what are essentially described as "Asian values". Malaysia is indeed among the countries which have argued, over the past few years, that the universal values, principles and rights set out in, inter alia, the Universal Declaration of Human Rights may be subject to cultural, historical, social, religious and/or political interpretation and constructs.

10. Like other countries in south-east Asia, Malaysia has been experiencing economic and environmental crises in 1997 which have had considerable implications. Some of the policies of the Mahathir Government were progressively called into question. The ruling coalition of parties in the Barisan Nasional continues to dominate the political arena, but a number of developments, particularly within the United Malay National Organization (UMNO - principal party of the ruling coalition) party, including the coming of age of a new generation of voters, tend to suggest that the traditional pattern of Malaysian politics is changing.

11. On 2 September 1998, Prime Minister Mahathir dropped Deputy Prime Minister Anwar Ibrahim from the Cabinet on alleged grounds of immoral and corrupt conduct. According to Mr. Anwar, his ouster was actually due to political differences and led to a series of demonstrations advocating political reforms. In September 1998, the Government detained Mr. Anwar and many of his supporters without trial under the Internal Security Act (ISA). Ibrahim Anwar and most of his associates were later released from ISA detention though Mr. Anwar remained imprisoned pending trial on criminal charges. These developments could have an important impact on UMNO party elections scheduled for 1999 and Malaysia's general elections, which must be held before April 2000.

12. As regards the information sector, the political crisis had implications for the quality and the objectivity of the information made public as well as for the Government's attitude towards the exercise of the right to freedom of opinion and expression, which became more restrictive. The role played by the media after the ouster of Anwar Ibrahim was very strongly criticized in certain quarters, resulting in a loss of credibility in the Malaysian media. Indeed, allegations made in affidavits which were not subjected to the judicial process were allegedly manipulated by the media and used against Mr. Anwar. Furthermore, and despite the plethora of national as well as foreign newspapers and private television and radio services, the current climate, described as a "climate of fear" by the civil society, inhibits independent or investigative journalism and results in self-censorship of issues that government authorities might consider sensitive.

II. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. Legal framework

13. In this section, the Special Rapporteur will briefly consider some aspects of the international and national legal framework governing the protection of the right to freedom of opinion and expression in Malaysia.

1. International obligations

14. Malaysia is a member of the United Nations and is thus bound to respect the rights and guarantees set out in the Universal Declaration of Human Rights, of which article 19 enshrines the right to freedom of opinion and expression.

15. Malaysia is a party to five international instruments: the Convention on the Rights of the Child (although with several reservations, in particular to article 13 which provides the right to freedom of expression of the child), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Nationality of Married Women, also with reservations.

16. Malaysia has not acceded to the International Covenant on Civil and Political Rights, nor to three other major conventions, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. National legislation

(a) The Constitution

17. Although article 10 of the Federal Constitution of Malaysia provides for the right to freedom of speech and expression, as well as the right to peaceful assembly "without arms", restrictions may be imposed by Parliament on these rights in the interests of the security of the Federation, friendly relations with other countries, public order or morality, in order to protect the privileges of members of Parliament or to provide against contempt of court, defamation or incitement to any offence.

18. Article 149 of the Constitution allows laws to be passed by Parliament that could restrict the right to freedom of speech as well as the rights to due process, freedom of assembly and association merely by stating, in the law itself, that "action has been taken or threatened by any substantial body of persons whether inside or outside the Federation to cause a substantial number of citizens to fear organized violence against persons and property". This can be done without a declaration of emergency. Today, article 149 provides the constitutional basis for two laws which provide for indefinite detention without trial - the Internal Security Act (ISA) 1960 and the Dangerous Drugs Act (DDA) 1985.

19. In addition, the Constitution's guarant of freedom of expression is qualified to the extent that it can be restricted by a simple act of Parliament.

(b) The law on the press and other mass media

20. Following the mass detentions under the ISA in 1987 and the judicial crisis of 1988 when three independent judges were removed, a number of existing laws were amended to increase the power of the executive.

21. The Printing Press and Publication Act 1984 proscribes in section 8A (1) the malicious publishing of false news defined as "not taking reasonable measures to verify the truth". Section 8A (1) of the Printing Press and Publications Act 1984 reads as follows: "Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding 20,000 ringgits or to both". Under the Act, the Government may ban the publication, import and circulation of any manuscript or publication deemed prejudicial to bilateral relations, public morality, security, public order, national interests, or which may alarm public opinion.

22. The Broadcasting Act of 1987 empowers the Minister of Information to control and monitor all radio and television broadcasts and to revoke the licence of any private company broadcasting material conflicting with "Malaysian values".

23. The Control of Imported Publications Act regulates foreign publications circulating in the country and gives the Government absolute discretion to ban any foreign publications deemed prejudicial to public order, morality or the security of Malaysia.

24. The 1967 Bernama Act - which established the Government-controlled news agency, Bernama - was amended in June 1990 in order to give Bernama exclusive rights to distribute news photographs, economic and financial data and other material. The amendment also allowed Bernama to cease being guided by the international conventions protecting freedom of information.

(c) Other legislation with a direct impact on the exercise of the right to freedom of opinion and expression

25. In recent years, a number of laws were amended including the Societies Act and the Police Act. These laws, along with the Sedition Act, could be used to suppress or repress expression and to curb peaceful assembly.

26. The Sedition Act 1948 prohibits public comment on issues defined as sensitive, such as citizenship rights for non-Malays, the special position of ethnic Malays in society, and certain aspects of religion. Section 4 (1b) of the Sedition Act reads as follows: "Any person who utters seditious words shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding 5,000 ringgits or imprisonment for a term not exceeding three years or to both, and for a subsequent offence, to imprisonment for a term not exceeding five years."

27. The Official Secrets Act was amended in 1986 to extend the classification of government documents and places the onus on journalists to prove that the information is not secret before it is published. This Act also provides for a minimum one-year custodial sentence on those found guilty of an offence under the Act.

28. The ISA allows for detention by the police for up to 60 days for interrogation of any person suspected of acting or being about to act in a manner prejudicial to the security of Malaysia or any part of the country; following the initial 60 days, further detention for up to two years may be authorized in writing by the Minister of Home Affairs. Moreover, the right of detainees to challenge the legality of their detention is limited to procedural matters.

B. Principal observations and concerns

1. The media

(a) The print media

29. The Special Rapporteur was informed that the Printing Presses and Publications Act 1984 contains important limitations on press freedom. First of all, domestic and foreign publications must apply annually to the Government for a licence. The Act was further amended in December 1987 to make the publication of "malicious news" a punishable offence, to expand the Government's power to ban or restrict publications and to prohibit court challenges to the Government's actions. According to some NGOs in Malaysia that produce licensed periodicals which have critical views on government policies, the requirement to renew their licences annually exerts pressure on these publications with respect to their content and obliges the editors-in-chief to remain close to the Government. Some examples of newspapers affected by this Act are The Star, Watan and Sin Chew Jit Poh, three daily local newspapers whose licences were reportedly suspended for several months during 1987 and 1988 following allegations of publications of ethnic issues.

30. In addition, the Special Rapporteur's attention was drawn to the fact that all major daily newspapers are very closely tied to companies connected to political parties in the ruling Government, which makes the Malaysian press dependent upon the Government. Consequently, the newspapers provide uncritical coverage of government officials and give only limited and selective coverage to political views of the opposition or political rivals. Editorial opinion frequently reflects government positions on domestic and international issues. However, on some issues there is sometimes criticism of government policies, such as some environmental and social programmes and the functioning of government services. In addition Chinese and Indian newspapers are generally more free in reporting and commenting on sensitive political and social issues.

31. It is also alleged that newspapers and editors who are close to the opposition parties or supporters of former Deputy Prime Minister Anwar can expect to be censored or subjected to pressure. In this regard, the Special Rapporteur was informed that before Mr. Anwar's arrest, two editors of

Malaysia's leading national Malay-language newspapers, Johan Jaafar from Utusan Malaysia and Ahmad Nazri Abdullah from Berita Harian, were pressured to resign by UMNO after having published reports and editorials highlighting views expressed by Ibrahim Anwar. According to the information received, the newspapers are perceived to have sided with Mr. Anwar in its coverage of intra-party struggles over political and economic reform.

32. The Special Rapporteur was furthermore informed that owing to political pressure, the Malaysian press practises self-censorship in order to follow the government line. This phenomenon was particularly visible during the financial crisis and the environmental problems in 1997. Whereas pertinent information on the two issues appeared in the press of neighbouring countries and in the international press, much of this information went unreported in Malaysia. Specific instructions were allegedly given not to report too much about these problems as it might adversely affect the country's image as well as tourism. Some of the justifications given by the Government to limit freedom of the press and which were conveyed to the Special Rapporteur during the visit were the necessity of avoiding any ethnic minority problems and, more generally, sensitive reports that would undermine "national peace and harmony".

33. The Special Rapporteur's attention was also drawn to the fact that the Government uses the Printing Presses and Publications Act to limit the freedom of expression of certain human rights activists. The Special Rapporteur met with Irene Fernandez, Director of Tenanganita, a women's non-governmental organization, who was arrested on 18 March 1996 and charged under section 8a of the Act with publishing "false news" in a report on alleged human rights violations in camps for detained migrants. Ms. Fernandez is free pending trial. As of the beginning of 1998, her trial was not yet completed and her case is reportedly the longest one in Malaysian history. If convicted, she faces up to three years' imprisonment or a fine, or both.

34. With regard to the foreign press, it was alleged that the Government has periodically chastised foreigners for exaggerating Malaysia's problems. According to certain sources, the Information Ministry announced on 9 August 1998 that it plans to impose new rules and restrictions that would allow the Government to monitor more closely the movements of foreign journalists in the country.

35. The Special Rapporteur had already been made aware of this problem since he had transmitted an allegation to the Government of Malaysia, in the framework of his mandate, on the deportation to the Philippines of Ms. Leah Palma Makabenta, Kuala Lumpur correspondent for Iter Press service and a national of the Philippines. Allegedly, her press pass was revoked on 1 April 1994 and she was ordered to leave the country within 48 hours because of an article she had written on the mistreatment of migrant labourers from neighbouring countries, which the Government said threatened national security. Reportedly, the Deputy Home Minister announced on 6 March 1994 that all foreign journalists who published what the Government considered to be negative reports about Malaysia should be banned from working in the country. The Special Rapporteur brought up this allegation again when he met with the Deputy Home Minister, since no reply from the Government had yet been received.

36. At the same time, the Special Rapporteur remains hopeful at the emerging openness that can be observed. On 3 May 1998, World Press Freedom Day was organized in Kuala Lumpur by the Asian Institute for Development Communication (AIDCOM) in collaboration with UNESCO, during which a panel discussion on press freedom was held between journalists and editors. Along the same lines, the Special Rapporteur welcomes the organization of the Commonwealth Editors Forum from 21 to 23 October 1998 in Penang which he had the opportunity to attend for a day. This event, which gathered editors from 35 different countries, shows a certain will to encourage debate on the press within Malaysian society.

(b) The broadcast media and the new technologies

37. Broadcasting is completely regulated by the 1988 Broadcasting Act which requires licensing for the operation of radio and television stations. The Act confers wide competence on the Ministry of Information. The Malaysian electronic media are either Government controlled or run by companies close to the ruling political parties. The content of private channels is closely monitored by the authorities. The Special Rapporteur's attention was drawn to the fact that the broadcast of CNN programmes is, according to some sources, delayed by one hour and that a voice-over summarizes the content of the journalist's presentation. However, the opinion has been expressed that the voice-over happens exceptionally rather than routinely. The Special Rapporteur is of the view that this practice could be assimilated to censorship and deserves examination.

38. The major newspapers and most of the broadcast media - RTM, TV3, Mega TV, MetroVision, NTV7 and Astro - are owned and controlled by Barisan parties or those closely associated with them. This economic control of the media is reinforced by a code of conduct for the attribution of terrestrial and satellite frequencies to which hertz and satellite connections are also bound. Thus, a programme is classified "18-PA" - only for persons over 18 years old - if it contains anti-cultural, political or religious elements.

39. It has been brought to the Special Rapporteur's attention that the various political parties have unequal access to the electronic media. UMNO, the ruling party, has full and free access to the media whereas the opposition parties have some difficulties of access. In a meeting with Lim Kit Siang, who has been the leader of the opposition for 20 years, the Special Rapporteur was informed that Mr. Lim has not had even one minute on television at any time during that period. However, he has a home page on the Internet which is accessible to everyone in Malaysia and outside the country.

40. As in the print media, self-censorship of the electronic media is also visible. In this regard, it was reported to the Special Rapporteur that local cable television companies frequently eliminate foreign press reports on Malaysia.

41. Furthermore, the Special Rapporteur was informed that broadcast of the Malaysian demonstrations on 21 September 1998 by several television stations, including the British Broadcasting Corporation, the Australian Broadcasting Corporation and TV New Zealand, was jammed for several hours. Three days later, the Minister of Information announced that foreign television

organizations would not be allowed to use the State broadcaster's facilities, which were meant for covering a specific event and were not meant for general use.

42. At the same time, the country is open to information from outside, owing mainly to the economic forces of globalization: on 11 June 1997, the Minister of Information announced that Bernama would no longer have a monopoly on the transmission of foreign news in the country, which it had enjoyed since 1990.

43. Regarding the new technology, and in particular the Internet, the number of Internet users is growing increasingly in Malaysia and the Malaysian authorities encourage citizens to equip themselves for the Internet. Although access to the Internet is widespread in the country, sensitive sites are nevertheless still closely controlled and intimidation of Internet users has been alleged and reported to the Special Rapporteur. In August 1998, two individuals were detained under the Internal Security Act for having allegedly used the Internet to start rumours that the 200,000 Indonesian migrant workers scheduled to be deported before the start of the Commonwealth Games were hoarding knives and machetes and intending to riot.

44. The Special Rapporteur is of the view that while the use of the Internet should be allowed fullest scope, it should not be abused to spread false news or for rumour-mongering. However, the Special Rapporteur wishes to encourage the use of the Internet, which shows that Malaysians are seeking alternative viewpoints using new modes of communication.

2. The legal restrictions on freedom of opinion and expression

45. During his visit, the Special Rapporteur noted with concern that Malaysia has a range of laws which can be used to control and limit the exercise of the right to freedom of opinion and expression (see paras. 21 and 26 to 28).

46. The ISA was passed more than 30 years ago, when there was an active Communist insurgency. The Special Rapporteur notes with concern that, under the Act, any police officer may arrest without a warrant and detain for up to 60 days any person suspected of acting in "any manner prejudicial to the security of Malaysia". Furthermore, these detainees can be held incommunicado, without access to legal representation or doctors, and often at risk of ill-treatment.

47. According to the Government, the object of the ISA is to control internal subversion threatening the security of the State. The Special Rapporteur was informed, however, that the Act in practice was not limited to its original purpose but was also being used to arrest and detain activists and leaders of a number of political parties as well as social and religious organizations. In early 1996, the Government indicated its intention to review the ISA; however, the use of the Act by the police has increased. It is time for the Act to be reviewed.

48. The Special Rapporteur notes with concern that during the weekend of 20 September 1998, more than 50 demonstrators were reported to have been

arrested and 17 were detained under the ISA between 20 and 29 September; 13 had been released by 10 October but 4 remain in detention. According to the Government, there are no more political detainees under the ISA.

49. Unable to visit Mr. Anwar in detention, the Special Rapporteur nevertheless had the opportunity to meet with one of his lawyers, Raja Aziz Adruce, as well as with Mr. Anwar's wife, Dr. Wan Aziza. She herself was investigated under the Sedition Act, and on 23 September 1998 she also was served an order under the ISA prohibiting her from holding gatherings at their home, speaking in public and carrying out any political activities.

50. The Sedition Act is another legal restriction on the right to freedom of expression and opinion. This legislation contains very broad definitions of so-called "seditious tendencies", which include a tendency to bring into hatred or contempt or to excite "disaffection" against any ruler, the Government or the administration of justice. This Act was used as part of the case against Lim Guang Eng, a member of Parliament and Deputy Secretary-General of the Democratic Action Party (see para. 54).

51. Furthermore, access to public information or information relating to public interest issues is severely restricted by the Official Secrets Act 1972, which was amended extensively in 1983. Under this Act, departmental heads have broad powers to classify documents as "secret" and therefore inaccessible to the public. As this classification is completely subjective and not subject to any independent scrutiny, the Special Rapporteur notes that the Official Secrets Act can also potentially restrict freedom of the press. Any public officer can declare any material an official secret - a certification which cannot be questioned in court. This Act also obliges journalists who have used classified documents to reveal their sources. It has been brought to the Special Rapporteur's attention that in 1995, two journalists working for the newspaper Harian Metro were arrested and detained for alleged contravention of the Act. However, they were not charged and were subsequently released.

52. In view of the above considerations, the Special Rapporteur wishes to recall that under international human rights law, the right to freedom of expression can be restricted only in the most serious cases of threats to national security. He refers in this regard to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, which offer some guidance on this matter (E/CN.4/1996/39, annex), as well as to paragraphs 46 to 48 of his last report (E/CN.4/1998/40).

3. The judiciary

53. The Malaysian Constitution provides for an independent judiciary and in the eyes of the Constitution it is the judiciary that remains the best custodian of fundamental freedoms. It is for the courts to ensure that restrictions are not such as to render these freedoms illusory.

54. The case of Lim Guan Eng was mentioned to the Special Rapporteur as an example of selective prosecution based on political motivations, as well as a violation of the right to freedom of expression. Member of Parliament and Deputy Secretary-General of the opposition, Mr. Lim Guan Eng went on trial in

January 1996 after publicly criticizing the judiciary and in particular the Government's handling of allegations of statutory rape against the former Chief Minister of Malacca. After having lost an appeal before the Federal Court in April 1998, Lim Guan Eng is now serving two concurrent 18-month prison terms for sedition and malicious publishing of false news.

55. The Special Rapporteur requested by letter dated 21 October 1998 to meet with Lim Guan Eng, but did not receive any reply. During a meeting with the Deputy Home Minister, the Special Rapporteur expressed his concern about Lim Guan Eng's case and drew attention to the fact that as a member of Parliament, he should be able to attend the Parliament's sessions. The Special Rapporteur also met with Lim Guan Eng's father, Lim Kit Siang, who provided him with updated information on his son.

56. During his visit, the Special Rapporteur met with Murray Hiebert, a Canadian correspondent for the Far Eastern Economic Review who was found guilty of contempt of court and sentenced to three months in jail on 4 September 1997. Since then, Mr. Hiebert has had to surrender his passport to the authorities and is not able to travel or to go back to his country to visit his family. The Special Rapporteur asked for the Government's special consideration in this case.

57. In addition, it was brought to the Special Rapporteur's attention that defamation laws have at times been used to stifle freedom of expression. The Special Rapporteur learned that in recent years civil suits have been brought alleging defamation and requesting damages of up to millions of ringgit. This is a phenomenon which appears to be having a very chilling effect on freedom of expression and needs to be curbed. In this regard, the Special Rapporteur is deeply concerned about the case of Dato' Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers, who faces four defamation suits (seeking damages totalling $108 million) brought by several prominent individuals and Malaysian corporations for a 1995 interview with the London-based magazine International Commercial Litigation, in which he commented on his investigations into allegations of corporate interference with the Malaysian judiciary. Since the Malaysian Government did not recognize the immunity granted to him by the United Nations Secretary-General in his capacity as Special Rapporteur, the case was referred to the International Court of Justice. The Special Rapporteur anxiously awaits the final judgement in the matter.

4. Restrictions on the right of assembly

58. In view of the nature of his mandate, the Special Rapporteur does not wish to address questions relating uniquely or mainly to freedom of assembly. Nevertheless, in view of the fact that the right to freedom of assembly is an intrinsic part of the right to freedom of expression, he would like to offer some observations on this matter.

59. The right to freedom of assembly is guaranteed by the Malaysian Constitution with certain restrictions "in the interest of security and public order". The Police Act 1967 requires a police permit 14 days before any public assembly is held. This Act was further amended in 1989

to allow the police to disperse large gatherings on private premises if they were of the opinion that there was a threat to public order, or a breach of the peace could occur.

60. Whereas spontaneous demonstrations occur periodically, albeit limited in scope and generally with the tacit consent of the police, public rallies as part of electoral campaigning have been banned by the Government since 1978. Opposition parties are therefore forced to apply for permits to hold small meetings and often complain that they are denied permits for such gatherings. The Special Rapporteur's attention was drawn to alleged actions by the police to cancel a public meeting organized by the opposition Democratic Action Party on 31 May 1998 and a meeting of political parties on 2 June, which were intended to discuss the administration of justice and a miscarriage of justice against a member of Parliament. The police asserted that both gatherings were a threat to national security.

61. Since the removal of Mr. Anwar, although police permits were often refused, several demonstrations took place during the month of September 1998 to support Mr. Anwar and his call for reform. In October 1998, public rallies became more frequent while remaining spontaneous and peaceful.

62. The Special Rapporteur is deeply concerned about the way the police sometimes dispersed the demonstrators who were peacefully expressing their opinion and their right of assembly. According to the information transmitted to the Special Rapporteur, at least 126 persons were arrested on 20 and 21 September 1998. Though most of them were later released on bail, they are still being charged with participating in an illegal assembly, which carries a maximum penalty of up to six months in prison.

63. In the course of a meeting with the leader of the opposition, Lim Kit Siang, the Special Rapporteur was informed that at the 17 October demonstration, 127 people were arrested and appeared in the magistrate's court charged with participating in an illegal gathering. During the Special Rapporteur's mission, a large rally was held on the occasion of the presentation of the 1999 budget by Prime Minister Mahathir on 23 October 1998. According to the information received, the crowd was dispersed and six people arrested, including a journalist working for an Australian news agency, for illegal assembly and obstructing the police from discharging their duties.

64. The Special Rapporteur wishes to express his concern over this unfortunate development. According to several NGOs, academics and political leaders, these recent demonstrations, which are without precedent, highlight the need for more democracy in the country.

III. CONCLUDING OBSERVATIONS

65. Freedom of opinion and expression is the basis of all freedoms upon which the edifice of democracy rests. No nation can progress unless freedom of speech is secured for every individual and protected by law. Malaysia of late has made great progress in the economic and social

fields. Nevertheless, steps should be taken to strengthen the protection of human rights, and in particular the right to freedom of opinion and expression.

66. The Special Rapporteur is concerned at the extent of the limitations on the right to freedom of opinion and expression in the national legislation of Malaysia. With regard to the use of laws to protect the security and the integrity of the State, the Special Rapporteur is compelled to conclude that certain wording in and the implementation of these laws, in particular the Internal Security Act, the Sedition Act and the Printing Presses and Publication Act, fail to offer adequate protection of the right to freedom of opinion and expression as provided for by applicable international human rights law, including article 19 of the Universal Declaration of Human Rights. The Special Rapporteur wishes to emphasize that only in highly exceptional cases can a nation's security be directly threatened by a person capable of and intending to cause actions to be taken to that end, in particular by advocating or inciting to the use of violence. In no instance may the exercise of the right to freedom of expression be punished on the mere ground that it might possibly jeopardize national security. It is for the State to establish what consequences would ensue from a specific action and why it would constitute a direct threat to national security.

67. Freedom of the media in Malaysia has been often hindered by exerting political and legal pressure on journalists, which has led to widespread self-censorship in their daily work. The Special Rapporteur considers the dependence of the mass media on the State through State ownership or economic control by the ruling party to be undesirable. The Special Rapporteur is particularly concerned at the limited access of opposition politicians to the electronic media. In this regard, the Special Rapporteur emphasizes that the most important functions of the media - to inform, investigate, expose abuse and educate - are of crucial importance to society, and can only be fulfilled by media that are free from unnecessary constraints.

68. The Special Rapporteur expresses his distress concerning the alleged obstacles to the free exercise of foreign media, in particular the prosecution of foreign journalists and governmental measures to restrict the broadcasting of foreign electronic media. The Special Rapporteur observes that the Malaysian public's effective exercise of their right to receive complete and reliable information should not be limited and that the population should not be prevented from having full access to a multitude of opinions and critical views.

69. Furthermore, the Special Rapporteur notes that the Malaysian public would like to see more transparency and accountability in its own media so that there is more spontaneity in reporting and analysing important issues. Additional efforts should be made, through adequate training of journalists, to be more balanced and objective in order to regain some credibility in the eyes of the public.

70. The Special Rapporteur wishes to express his view that freedom of expression would be enhanced if a more liberal view were taken with respect to demonstrations. Democracy, in fact, thrives on them.

71. With regard to the judicial system, the Special Rapporteur considers that the executive should not be permitted to use the judiciary in such a manner that would be seen by the people as an attempt to restrict their rights. The impartiality of the judiciary should not be called into question.

IV. RECOMMENDATIONS

72. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations to the Government for its consideration. In view of the open and constructive exchanges of views that took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

73. The Government is strongly encouraged to consider taking further steps to fully guarantee the protection of the right to freedom of opinion and expression. These steps should include the repeal of the Internal Security Act and the consideration of other means, in accordance with international standards, to protect its national security. It should furthermore include amendments to some of the current national legislation, in particular the Printing Presses and Publication Act, the Sedition Act and the Official Secrets Act, to facilitate the exercise of the right to freedom of opinion and expression in a more transparent and judicious manner.

74. It is recommended that the Government review cases of persons who are being held for having exercised their right to freedom of opinion and expression with a view to releasing them. The cases of all persons who have been tried in court and convicted in application of laws or regulations incompatible with the protection of the right to freedom of opinion and expression, as affirmed in the Universal Declaration on Human Rights, should also be reviewed.

75. The Special Rapporteur urges the Government of Malaysia to repeal the regulations on annual licensing of newspapers in order to ensure that any registration requirements serve an administrative purpose only and are not used to impose restrictions on the media outside the scope of article 19 of the Universal Declaration on Human Rights.

76. The Special Rapporteur strongly encourages the Government to take all necessary steps to ensure the independence of the media, including safeguards against any interference by political interests. The establishment of an independent media council could be a first step. Initiatives on the part of media professionals to establish independent and voluntary professional associations should also be encouraged, in particular with regard to developing methods and systems of voluntary

self-regulation such as codes of ethics for the profession, training programmes which address the rights and responsibilities of the media and the Government, as well as monitoring the implementation of the right to freedom of expression and freedom of the media in accordance with international standards.

77. The Special Rapporteur urges the Government to respect the right of Malaysians to hold peaceful demonstrations and assemblies and to adhere to international standards on the use of force against demonstrators.

78. The Government is encouraged to align its national law with the provisions of international law relating to freedom of opinion and expression, in particular by introducing more explicit national legislation to facilitate the attainment of a proper balance in the judiciary's efforts to protect human rights in general and the right to freedom of opinion and expression in particular.

79. The Special Rapporteur strongly encourages the Government of Malaysia to take all necessary steps to sign and ratify the International Covenant on Civil and Political Rights, as well as its Optional Protocols.

80. Finally, the Special Rapporteur recommends that the Government give serious consideration to the establishment of an ombudsman's office and of a special commission for human rights or a separate ministry for human rights.

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

Government of Malaysia

Datuk Seri Abdullah Badawi, Minister for Foreign Affairs
Datuk Seri Mohamad Rahmat, Minister of Information
Datuk Tajol Rosli Mohd. Ghazali, Deputy Home Minister, Ministry of Home Affairs

Professionals in the information sectors

Datuk A. Kadir Jasin, Editor-in-Chief, New Straits Times
Ms. Aisha Ali, Features Editor, New Straits Times
Mr. Raphael Pura, Southern Asia correspondent, The Asian Wall Street Journal
Mr. Murray Hiebert, correspondent, Far Eastern Economic Review

Non-governmental organizations

Professor Chandra Muzaffar, President, International Movement for a Just World
P. Ramakrishnan, Aliran Kesedaran Rakyat (ALIRAN)
Mr. Gan, ALIRAN
Raja Aziz Adruce, HAKAM
Ramdas Tikamdas, HAKAM
Sivarasa Rasiah, Suara Rakyat Malaysia (SUARAM)
Irene Fernandez, Director, TENAGANITA
Tunku Abdul Aziz, Coordinator for Malaysia, Transparency International

Other individuals

Dato' Param Cumaraswamy, United Nations Special Rapporteur on the independence of judges and lawyers
Lim Kit Siang, Parliamentary Opposition Leader
Professor Jomo Kwame Sundaram, Faculty of Economics and Administration, University of Malaya
Khairul Bashar, Executive Director, Asian Institute for Development Communication (AIDCOM)
Abdul Razak Baginda, Executive Director, Malaysian Strategic Research Centre (MSRC)
Dr. Wan Aziza, wife of the former Deputy Prime Minister and Finance Minister, Ibrahim Anwar

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